

ORIGINAL

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

TIMOTHY KEENE

VS

DANIEL SCHNEIDER and
JARED HATCH

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DOCKET NO. 2:07-cv-00079
WKS

D E P O S I T I O N

OF

DANIEL SCHNEIDER

Taken on behalf of the Plaintiff
on Monday, July 7, 2008 at the
law offices of Rubin, Kidney, Myer & DeWolfe,
Barre, VT.

APPEARANCES:

MAGGIE K. VINCENT, ESQ., of the firm Rubin, Kidney,
Myer & DeWolfe, 237 N. Main Street, Barre, VT
05641-4125, appeared and represented the Plaintiff.

DAVID R. GROFF, ESQ., of the firm Office of the
Attorney General, 109 State Street, Montpelier, VT,
05609-1001, appeared and represented the
Defendants.

COURT REPORTER: Virginia L. Simmer, RPR

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1 Q. Okay.

2 A. And then it just says 20:24 hours arrived on
3 scene. So according to this I don't know exactly
4 where arrived on scene is. I mean, it doesn't even
5 say scene. It just case SC.

6 Q. And you're assuming that's arrived on scene?

7 A. It looks like according to this possibly at
8 00:24 hours I arrived at Mr. Keene's house if
9 I'm -- if arrived on scene means Mr. Keene's house.

10 Q. Okay. Then can you tell from that when you
11 left Mr. Keene's residence?

12 A. According to this, no, I can't.

13 Q. Can you tell when he received medical
14 assistance on the road?

15 A. It says rescue is on scene at 0:49 hours
16 which is now the 16th.

17 Q. And were you the person who transported Mr.
18 Keene?

19 A. To which location?

20 Q. From his residence to the barracks.

21 A. Yes, I did transport Mr. Keene from Route 2
22 where he received medical attention to the
23 barracks.

24 Q. Okay. So are you cruiser 234?

25 A. That is my call number, yes.

1 you decided to place him under arrest and what
2 happened then?

3 A. I ordered him to turn around and place his
4 hands behind his back which he refused to do. And
5 I ordered him several more times to place his hands
6 behind his back which he refused to do. And then I
7 advised him if he did not comply with my lawful
8 orders I would spray him with my OC which then he
9 again refused to comply with my orders. I then
10 sprayed him in the face with my OC and then forced
11 him to the ground.

12 Q. Okay. And did he -- did Mr. Keene engage in
13 any assaultive behavior toward you?

14 A. He became defiant, standoff-ish. I perceived
15 that as a clue that he could become assaultive.

16 Q. How did he display his defiance?

17 A. By crossing his arms, changing his tone of
18 voice and telling me no, he was not under his
19 arrest.

20 Q. Tell me how he crossed his arms?

21 A. Across his chest like this.

22 Q. So you just crossed your arms across your
23 chest?

24 A. Yes, ma'am.

25 Q. And you regard that as preliminary

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1 Q. And you'll agree in that time we heard
2 basically eight words from Mr. Keene?

3 A. I don't know. I can't recall how many words
4 he said.

5 Q. For what, he said for what twice in response
6 to your arresting him, did you hear that?

7 A. Yes.

8 Q. He said no three times?

9 A. Once again, I don't know how many times he
10 said no.

11 Q. He said what's OC?

12 A. Yes.

13 Q. And he said yes?

14 A. Yes.

15 Q. But you heard defiance in there?

16 A. From the beginning of how I was interacting
17 with him to that point in time at the time I
18 believed it was becoming defiant, him changing his
19 tone of voice.

20 Q. Okay. So would you agree that he sounds
21 pretty quiet on that video?

22 A. I mean, I can hear him. I wouldn't say he's
23 yelling at me, no.

24 Q. He's not yelling. You're speaking in a
25 fairly firm tone of voice?

1 A. Yes.

2 Q. He isn't even matching your volume, he's
3 softer than you are, right?

4 A. I don't know about that. My body mic is
5 right here on my chest.

6 Q. Okay. Did you hear any forceful kinds of
7 words from him in there?

8 A. No. And then after the whole incident he
9 started cursing at me.

10 Q. I'm sure we'll get to that but I'm talking
11 about those moments when you first chose to arrest
12 him and spray the OC. So I'm talking about that
13 portion of time. And you said that he was defiant
14 and he was not complying with putting his hands
15 behind his back?

16 A. Yes.

17 Q. And that you took that defines to mean that
18 he could become assaultive?

19 A. Yup, yes.

20 Q. And your indicators again that he could
21 become assaultive were that he placed his arms
22 across his chest?

23 A. Yes.

24 Q. Which most people would regard more as a
25 protective gesture, wouldn't they?

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1 that is an unusual statement on my part, for me.

2 Q. Okay. When you first said you're under
3 arrest and he said for what?

4 A. And I explained it to him and then he said
5 no, I'm not or something to that effect.

6 Q. Okay. And in that small segment that we
7 heard you did not hear him speaking at a high
8 volume?

9 A. According to the tape, no.

10 Q. Would you say that those words sound more
11 passive than anything else?

12 A. No.

13 Q. Okay. I'm going to play the part that comes
14 immediately after and ask you to count specifically
15 the blows that you can hear on the tape, okay?

16 A. Once again I would not know how many times.

17 Q. I'm going to ask you if you can count the
18 blows you can hear, okay.

19 (Tape played)

20 BY MS. VINCENT:

21 Q. So were you able to count blows?

22 A. Maybe 14.

23 Q. I know that you'd said in some of your prior
24 statements, some of your prior reports that you
25 lost count but on there you heard maybe 14 blows?

1 A. Maybe. Like I said, there's no video so I
2 don't exactly know exactly. I count the exertion
3 of me going "ah" as a possible me striking him.

4 Q. So that is you that we hear on there making
5 the "ah" sound as you said?

6 A. Yes.

7 Q. And can you attribute any of those blows to
8 Trooper Hatch?

9 A. At this point, no, I can't. I don't know.

10 Q. Did you hear Trooper Hatch at all on that
11 video?

12 A. Yes.

13 Q. What did you hear him saying?

14 A. I can't recall right now. I was paying
15 attention to what you asked, that question.

16 Q. So you heard his presence?

17 A. Yes.

18 Q. But you can't specifically attribute any of
19 the blows to him?

20 A. No, I don't know.

21 Q. Because it was your mic that was picking up
22 this interaction is it likely that the all 14 blows
23 that you heard were attributable to you?

24 A. Possibility.

25 Q. And you were winded there, right?

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1 A. Yes.

2 Q. Do you remember just kind of on an exertion
3 level how much force you expended in those two
4 minutes that those 14 blows that you heard were
5 being struck?

6 A. I was tired.

7 Q. Okay. And from the time -- let's go back to
8 when you sprayed Mr. Keene with the OC. You
9 thought you were alone in the house, right?

10 A. Well, I believed I was alone at his
11 residence, unsure if it was just me and Mr. Keene
12 in his residence. I was unsure of that.

13 Q. So you hadn't previously called for any kind
14 of backup assistance or anything like that?

15 A. I don't recall.

16 Q. Was it a surprise to you that Trooper Hatch
17 was there?

18 A. At that point when he came in, yes.

19 Q. You just hadn't been aware that he was on the
20 way or anything like that?

21 A. I don't recall. At the point when I was
22 speaking with Mr. Keene inside his residence I
23 believed I was the only trooper there at the
24 residence.

25 Q. And when you pulled up to his residence

1 Trooper Hatch was not with you?

2 A. No.

3 Q. He wasn't sitting out in the driveway in a
4 different cruiser?

5 A. No.

6 Q. Okay. And so you sprayed him with the OC?

7 A. Yes.

8 Q. And what was your next action?

9 A. I applied an arm bar, modified arm bar and
10 forced him to the ground.

11 Q. On the way to the ground did he hit anything?

12 A. Yes.

13 Q. What?

14 A. The front door or the door I entered in.

15 Q. Did he wind up face down on the floor?

16 A. Yes.

17 Q. And that was in the entryway?

18 A. Pretty much directly in front of the door.

19 Q. It's a little tiled area?

20 A. I don't recall.

21 Q. You don't recall flagstones right there by
22 the door --

23 A. I don't recall.

24 Q. -- that his face would have been in the
25 flagstones, you don't remember that?

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1 A. I don't recall what type of flooring it was.

2 Q. Okay. If he went down in front of the door
3 was the door open?

4 A. My best recollection was that it was closed.

5 Q. Okay. So what was -- on Mr. Keene going to
6 the floor what position did he assume, what
7 position was he in?

8 A. He was lying on his stomach with his arms
9 tucked underneath his chest.

10 Q. And on the way to the ground did he strike at
11 you in any way?

12 A. No.

13 Q. And while he was on the ground did he strike
14 at you with his hands?

15 A. No.

16 Q. Did he kick at you?

17 A. I don't recall.

18 Q. Did he just stay in kind of a possum position
19 with his arms under him?

20 A. He stayed on his stomach with and forcing his
21 arms underneath him.

22 Q. So he wouldn't release his arms?

23 A. Yes.

24 Q. But he wasn't striking you, he wasn't harming
25 you in any way?

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1 A. He was not striking me, no.

2 Q. Was he harming you in any way?

3 A. Not at that point, no.

4 Q. Is that a position from which you have any
5 fear that someone will physically harm you?

6 A. Yes.

7 Q. When someone's lying on their stomach on
8 their arms?

9 A. Potential, a lot of things could happen.

10 Q. So what is the potential when someone is
11 lying -- having just been OC's so I'm assuming
12 their vision isn't very good, when someone has just
13 had OC spray applied and their face is into the
14 ground and their arms are under them what is it you
15 specifically fear?

16 A. Them continuing to resist. I do not know
17 what type of weap -- even if Mr. Keene had a weapon
18 he could access stuff into his belt, his pockets,
19 he could try to roll into me. There's numerous
20 possibilities.

21 Q. And was it when he first on the ground that
22 you became aware of Trooper Hatch's presence?

23 A. When I became aware of Trooper Hatch's
24 presence was when he came inside.

25 Q. But I guess where in what we've just been

1 is on the floor. where were you in relation to his
2 head?

3 A. Are you familiar with his house?

4 Q. Yes.

5 A. I was -- my back was facing the stairs and I
6 was facing the door.

7 Q. Okay. So your back -- so in relation to his
8 body on the floor was it --

9 A. I believe it would be his right side.

10 Q. Okay. Was Trooper Hatch on the left?

11 A. He was next to the door and I believe it
12 would be on the left side.

13 Q. Okay. So one officer on either side?

14 A. Yes.

15 Q. Okay. And who was -- was one of you working
16 on Mr. Keene's arms more than the other?

17 A. I don't recall. I would try to access an
18 arm, he refused and then I would go to some type of
19 strikes and then try to gain an arm again.

20 Q. Did you believe that Mr. Keene was in some
21 altered state that he wasn't feeling the blows?

22 A. I believed he was intoxicated. I am unsure
23 if he felt the blows or not.

24 Q. Okay. He didn't give you any indication that
25 he was in pain from what was going on?

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1 A. From the tape --

2 Q. Or from your recall.

3 A. I don't really think he was feeling them at
4 that point. He still refused to comply with my
5 orders so I believe the strikes were ineffective.

6 Q. So refusal to surrender his arms means to you
7 that he didn't feel the blows?

8 A. They were ineffective.

9 Q. Okay. So the strikes that you were doing
10 which were again -- I'm sorry, would you back up
11 and describe what kind of strikes you were applying
12 to him?

13 A. I applied knee strikes, closed fist strikes
14 and then I stated elbow strikes but they're more of
15 a forearm strike instead of a straight elbow
16 strike.

17 Q. And those were ineffective?

18 A. Yes, ma'am, in my opinion.

19 Q. We kind of heard maybe three or four
20 different volleys, you know, kind of there will be
21 strike, strike, strike, strike, stop, Mr. Keene
22 saying "I've got a daughter upstairs," then, you
23 know, starting again. In between the kind of
24 volleys of your assault on him was that when you
25 were trying to get his arms?

1 MR. GROFF: Object to the form. Go
2 ahead and answer.

3 A. I'd assume it was I would give him some type
4 of strike and then try to regain an arm.

5 Q. Okay. So you think it was like one strike,
6 try to get an arm, another strike, try to get an
7 arm?

8 A. I'd say I let -- I would apply a few
9 strikes -- I don't know, I mean, it changed. I
10 heard a strike and then a pause and then a couple
11 strikes and a pause and then some more strikes and
12 a pause. I don't exactly know if I struck him once
13 and then tried to or struck him three times and try
14 to apply.

15 Q. But eventually after 14 or so blows you did
16 decide that was ineffective?

17 A. Yes.

18 Q. And then what did you do?

19 A. I applied a pressure point.

20 Q. Why didn't you apply a pressure point up
21 front?

22 A. I didn't think about it.

23 Q. Was the pressure point effective?

24 A. It was effective enough so I could gain an
25 arm.

1 Q. So how did you apply the pressure point?

2 A. According to my memory I had to try it twice,
3 once was with my fingertips, my index fingertips,
4 sorry. I applied pressure; it was ineffective.

5 Q. Where did you apply the pressure?

6 A. It's called a mandibular angular pressure
7 point. It is in the soft portion behind your ear
8 lobe on both sides. First applied it it was
9 ineffective and then I believe I applied it again
10 with my thumb tips.

11 Q. Okay. And?

12 A. And I observed his right arm to partially
13 come out enough so I could obtain his bicep and
14 then I was able to get him into a shoulder lock.

15 Q. Okay. And the shoulder lock -- by using the
16 shoulder lock were you able to get his other arm?

17 A. Yes, I had applied pressure to that for him
18 to release his other arm so we could put it in the
19 small of his back.

20 Q. Okay. And then you got him handcuffed?

21 A. Yes, ma'am.

22 Q. What was Trooper Hatch doing while you were
23 doing all this?

24 A. I believe he applied a few knee strikes like
25 I said to his lower half, to his small of his lower

1 back, the thigh area or love handle area and he was
2 continually trying to pull his arm, his left arm
3 free. And he was giving him verbal commands to
4 stop resisting also I believe.

5 Q. And you heard him thereafter maybe the third
6 blow saying "I have a daughter upstairs"?

7 A. At a point in time he stated that on the
8 tape, yes.

9 Q. And did you have any reaction or response to
10 that?

11 A. I think I said "Please stay upstairs."

12 Q. Okay. And then you heard his daughter kind
13 of crying and saying "Stop"?

14 A. Either when she made her presence known or
15 when he said that I said "Please stay upstairs"
16 when I became aware that somebody was upstairs.

17 Q. Okay. And let's go back. At some point your
18 microphone which has been on through this whole
19 thing you actually turned it off, right?

20 A. Yes, ma'am.

21 Q. And why did you do that?

22 A. So I could have a private conversation with
23 Trooper Hatch.

24 Q. Why did you need a private conversation with
25 Trooper Hatch?

1 Q. Okay. And you'd say that there was a smell
2 of fecal matter. Meaning that from a smell the two
3 of you thought that Mr. Keene had expelled some
4 fecal matter in his interaction with you?

5 A. Well, I advised Trooper Hatch that he smelled
6 of fecal matter. I don't know if he did that while
7 or before, I'm not too sure.

8 Q. Okay. When you went into his residence did
9 you notice that smell?

10 A. No.

11 Q. When you were standing there before you
12 applied the OC did you smell any fecal matter?

13 A. No.

14 Q. So if you didn't smell it when you were
15 asking him to put his hands behind his back but you
16 did smell it after the struggle, do you think that
17 he expelled some fecal matter during his
18 interaction with you?

19 A. Could have been.

20 Q. Likely?

21 A. Likely.

22 Q. And do you think the cause would have been
23 the blows that you directed to his abdomen or you
24 said his love handles?

25 A. I couldn't call. I would not know what would

1 have caused him to have that incident occur.

2 Q. Okay. And you described the situation with
3 Mr. Keene as a struggle in at least some of your
4 Affidavits. Did he ever struggle?

5 A. He resisted.

6 Q. By holding his arms under him?

7 A. Yes.

8 Q. And by lying very still and holding his arms
9 very close under him?

10 A. And not complying with my lawful orders.

11 Q. Right but not by flailing around and trying
12 to hit you or anything like that?

13 A. No.

14 Q. Okay. Is it unusual to call a patrol
15 commander or a supervisory officer from the road?

16 A. Is it unusual?

17 Q. Ah-huh.

18 A. No.

19 Q. And based on your training what is allowed in
20 a circumstance where someone is passively resisting
21 arrest?

22 A. Passively?

23 Q. Passively, not assaulting you, passively
24 resisting arrest.

25 A. In my view he was actively resisting, he was

1 A. I would say distraction and softening so he
2 would lessen his hold on his arms.

3 Q. Okay. Were you subject to any disciplinary
4 action with regard to this incident?

5 A. No.

6 Q. And were you subject to any disciplinary
7 review?

8 A. No.

9 Q. But your actions were reviewed by a
10 supervising officer?

11 A. Yes.

12 Q. And what did that review consist of?

13 A. My use of force.

14 Q. But what was the review process?

15 A. I submitted my use of force to the sergeant,
16 he reviewed it and then my best recollection of
17 what occurs is the lieutenant for the station
18 command reviews it and then I believe it goes up
19 from there. I'm not really too sure on the exact
20 process of it.

21 Q. Okay. But that's the chain of review?

22 A. Yes, ma'am.

23 Q. I just want to find one more portion of the
24 tape. Do you know how long it took before Mr.
25 Keene had any kind of medical attention for his

1 eyes?

2 A. Unsure.

3 Q. Decontamination for eyes, was that done by
4 you?

5 A. No.

6 Q. Who was it done by?

7 A. By the EMS that arrived on scene.

8 Q. And when the OC was applied right in his home
9 and there's a faucet right there was it unusual to
10 wait until minutes later for a professional to get
11 the OC off him on the roadside rather than just
12 using a faucet?

13 A. I'd say I wouldn't feel safe trying to
14 decontaminate somebody in their home. I would
15 rather have an ambulance show him up, get him out
16 of that situation.

17 Q. So you're saying that's not unusual?

18 A. I've never done it.

19 Q. So you've got someone handcuffed, you've got
20 two troopers there and a 14-year-old girl?

21 A. That we know of.

22 Q. And you didn't just use the faucet to
23 decontaminate him?

24 A. No.

25 Q. If it was 10, 15 minutes later is it unusual

1 potentially under assault that whole time -- under
2 threat of assault that whole time?

3 A. Well, I felt uncomfortable. He's becoming
4 from our conversation with the Bonnie Breer he was
5 more apt of talking to me, then I started
6 questioning him about his drinking and he started
7 not being so cooperative with the, you know,
8 questioning.

9 Q. Okay. Let's play those next three minutes.

10 (Tape played)

11 BY MS. VINCENT:

12 Q. So you're reacting to him saying "Shut the
13 fucking light off, get it off my eyes"?

14 A. Well, in my opinion it doesn't have to -- he
15 changed his attitude when I started questioning
16 him. I tried to lighten up the subject, talk to
17 him a little bit more and then go back at it.

18 Q. But prior to that he had asked you to stop
19 flashing the flashlight in his eyes and he didn't
20 use the word fucking then, he just said will you
21 stop using the flashlight?

22 A. Well, I had my flashlight on apparently.

23 Q. And then a minute later you've got the
24 flashlight in his eyes again and he reacts more
25 strongly because --

1 A. I don't know if I explained why I wanted -- I
2 think maybe the second time I explained why I
3 wanted him to step outside.

4 Q. And then he said no more firmly the second
5 time, would you agree with that?

6 A. I was really not paying attention --

7 Q. Okay, let's listen.

8 A. -- to that portion.

9 (Tape played)

10 BY MS. VINCENT:

11 Q. You've just twice asked him to step outside
12 with you and he said "No, I don't want to step
13 outside with you"?

14 A. Yes.

15 Q. And the first time was fairly soft, the
16 second time more firm? You didn't hear that?

17 A. I'd say it was, you know, a little bit
18 louder.

19 Q. And you didn't explain either time -- if your
20 purpose was to go outside for field sobriety
21 exercises, you didn't explain that either time?

22 A. Not at that point, no.

23 Q. No, okay.

24 (Tape played)

25 BY MS. VINCENT:

1 Q. So that's the whole interaction at his house
2 now, right, that you've heard the whole thing?

3 A. Yes.

4 Q. Other than the fact that he doesn't seem to
5 understand why you're interested in the fact that
6 he's drinking you point out the beer cans, in fact,
7 by his chair, you say is it those, the Natty Ices,
8 is that you?

9 A. Not by the chair. It was by the stairs.

10 Q. Okay. But other than his wondering why
11 you're interested in his drinking and other than
12 his saying no, I don't want to go outside with you
13 was he doing anything that was in any way violent,
14 assaultive, even loud?

15 A. Well, he started to get agitated about the
16 flashlight.

17 Q. Sure. The second time, as we said, the
18 second time evidently you flashed it in his eyes he
19 did react with some profanity, right?

20 MR. GROFF: Object to the form.

21 BY MS. VINCENT:

22 Q. The second time that he made a request that
23 you not flash your flashlight in his eyes did he
24 use profanity?

25 A. Yes.